IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6789 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJUBHAI ALIAS KALIYO RAIJIBHAI PARMAR

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 6789 of 2001

MR SATISH R PATEL for Petitioner No. 1

MR DP JOSHI, ASST.GOVERNMENT PLEADER for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/01/2002

ORAL JUDGEMENT

The petitioner is detained under PASA by virtue of an order passed by the District, Magistrate, Anand on June 27, 2001. He is branded as a boot-legger. The

detaining authority has considered four registered offences and statements of four anonymous witnesses for recording a satisfaction that the activities of the detenu are detrimental to public health and public order and that he is required to be immediately prevented from pursuing his illegal and anti-social activities. It is not possible to resort to alternative less drastic remedies under ordinary laws of the land and therefore, detention under PASA is a must.

2. The petitioner seeks to challenge the said order of detention by this petition under Article 226 of the Constitution of India. The learned Advocate for the petitioner has raised following contentions.

2.1 The subjective satisfaction recorded by the detaining authority is not genuine. There is gross delay in passing the order. He submitted that last offence was registered against the petitioner on 17.12.000, whereas the order is passed on 27.6.2001 and the live-link between the activity of the petitioner and the order is snapped. He submitted that so far as the statements are concerned, they were recorded on 25th and 27th Feb. 2001 respectively, which were verified on 21st and 26th June, 2001 and the order was passed on 27th June, 2001. He submitted that therefore, there is a long gap between date of recording of the statement and verification of the same. There was no time gap between verification and passing of order. The authority had no time to apply its mind as held by a Division Bench of this Court in case of Kalidas Kahar Vs. State of Gujarat, reported in 1993 (2) GLR 1659 and therefore, the order of detention stands vitiated. He submitted that the petition may be allowed.

3. Learned AGP Mr. Joshi has opposed this petition.

4. Having regard to the rival side contention, it is very clear that so far as registered offences are concerned, the last offence registered as of 17.12.2000, whereas the order is passed on 27th June, 2001. In between there is no offence registered against the petitioner and therefore, there is no live-link between the activity of the petitioner and the order. Ofcourse, there are statements of anonymous witnesses, but they also are recorded on 25th and 27th Feb. 2001, whereafter no activity is alleged and therefore also there is no live-link between the activity of the petitioner and the order. The satisfaction of the detaining authority, therefore, for the need for exercise of power under Section 3 of the PASA Act in comparison to the possibility of resorting to less drastic remedies under

ordinary law, cannot be said to be genuine.

5. Apart from this, it requires to be noted that the statements were verified lastly on 26th June, 2001 and the order was passed on 27th June, 2001 i.e. on the next day. The authority cannot be said to have sufficient time to properly verify the genuineness of the fear expressed by the witnesses and the need for exercise of power under Section 9(2) of the PASA Act. There was no scope for the detaining authority to weigh the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution of India, as against the need for the exercise of power under Section 9(2) of the PASA Act. In this regard, decision in the case of Kalidas Kahar Vs. State of Gujarat - 1993 (2) GLR 1659 can be profitably be referred to. The result is that the order of detention stands vitiated and cannot be permitted to stand. The petition therefore deserves to be allowed.

6. The petition is allowed. Order dated 27.6.2001 passed by the District Magistrate, Anand against the petitioner is quashed and set aside. Detenu Rajubhai Alias Kaliyo Rajibhai be released from detention forthwith, if he is not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave, J.)

*/Mohandas